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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,369	11/24/2003	Kenneth A. Bradenbaugh	010121-9946-00	4688
23409	7590	07/08/2004	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP			WILSON, GREGORY A	
100 E WISCONSIN AVENUE			ART UNIT	PAPER NUMBER
MILWAUKEE, WI 53202			3749	

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/720,369	BRADENBAUGH, KENNETH A.
	Examiner	Art Unit
	Gregory A. Wilson	3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 November 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 31-35 is/are allowed.
- 6) Claim(s) 1-5,7-25 and 27-29 is/are rejected.
- 7) Claim(s) 6,26 and 30 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-5, 9-11, 14, 24, 25, and 27** are rejected under 35 U.S.C. 102(b) as being anticipated by **Pfeffer (4,878,482)**. **Pfeffer** discloses a water heater (1) including a water tank (2), a jacket (12) surrounding the tank, an annular space between the tank and jacket, a sealing member (Figures 6-8) surrounding an outer surface of the tank and defining the bottom of the annular space, the sealing member has a first and second wiper member (45 & 46, SEE Figures 7 & 8) connected to a web structure in a cantilever fashion (Figure 8) and prevent foamable insulation from bypassing sealing members, the sealing member also includes a flange (35) depending from the bottom most wiper member, a liquid based insulation (13) which is injected or extruded under pressure into the space between the tank and jacket, a fiberglass batt (17) surrounding the tank beneath the sealing member; the sealing member includes first and second ends secured together by clamping band (40) using compressive force.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 7, 8, 12, 13, 15-23, 28, and 29** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Pfeffer (4,878,482)**. With regard to claims **15, 16, 18-20, 22, and 23**, **Pfeffer** discloses the applicants primary inventive concept including a sealing member with a first and second wiper member as stated above, however, **Pfeffer** does not specifically teach a sealing member having a first, second, and third wiper member. It would have been an obvious matter of design choice to modify the teachings (substitute) of **Pfeffer** to provide a third wiper member, since the applicant has not disclosed that having a third wiper member extending from the web portion solves any stated problem in a new or unexpected way or is for any particular purpose which is unobvious to one of ordinary skill. It appears that the claimed feature does not distinguish the invention over similar features in the prior art since, the first and second wiper members of **Pfeffer** will perform the invention as claimed by the applicant with any number of wiper members.

With regard to claims 7, 8, 12, 13, 17, 21, 28, 29, **Pfeffer** discloses the claimed invention except for the sizes of the wiper members in relation to each other. It would have been an obvious matter of design choice to modify the lengths and thicknesses of the appropriate wiper members, since such a modification would have involved a mere

change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

***Allowable Subject Matter***

**Claims 31-35** are allowed.

**Claims 6, 26, and 30** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

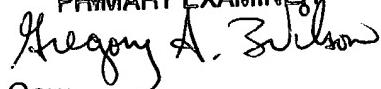
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory A. Wilson whose telephone number is (703) 308-1239. The examiner can normally be reached on 7 am - 4:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (703)308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3749

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GREGORY WILSON  
PRIMARY EXAMINER



Gaw

July 7, 2004